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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,991	10/13/2005	Yoshiaki Sato	SUZ0022-US	5832
36183 7590 05/26/2009 PAUL, HASTINGS, JANOFSKY & WALKER LLP 875 15th Street, NW Washington, DC 20005				
EXAMINER HORNBERGER, JENNIFER LEA				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
05/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,991

Applicant(s)

SATO, YOSHIAKI

Examiner

JENNIFER L. HORNBERGER

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newton (US 2,332,488) in view of Kawasaki et al. (US 5,433,724).

Regarding claim 1, Newton discloses a muscle development device comprising: a hollow tight fitting band (1) having a tube (14) and a wire-like piece (4) provided therein; and fastening means (10) for use in keeping a length of the tight fitting band in a loop having a desired size, the muscle development device being used to develop muscles of a limb while restricting the blood flow therethrough by means of applying, with said tight fitting band being wrapped around a predetermined compressed range of said limb and said tight fitting band being fastened with said fastening means to have a desired size, a predetermined pressure to said limb around which said tight fitting band is wrapped, the pressure being produced by introducing air to said tube, said wire-like piece being designed to limit the direction towards which said tube is allowed to inflate as said tube is filled with air, to against the muscles as determined with said tight fitting band being rest on the muscles (col. 2, ln. 5-8 and 46-48), wherein said wire-like pieces is a set of wire-like pieces that are placed in a direction generally perpendicular to the lengthwise direction of said tight fitting band at a predetermined distance along the length of said tight fitting band, and wherein said wire-like piece is provided on the inner surface of the outer segment of the tight fitting band opposite to the muscles and just outside the tube (col. 1, ln. 45 - col. 2, ln. 14). Newton discloses that wire-like pieces are stitched into place on the outer segment of said

tight fitting band (col. 2, ln. 30-38). Kawasaki et al. disclose a tight fitting band wherein reinforcing member (13) is attached to the tight fitting band by a two surface tap or sewing (col. 9, ln. 35-45). It would have been obvious to one of ordinary skill in the art to alternatively attach the wire-like reinforcement pieces of Newton with tape rather than stitching since taping and sewing the reinforcement means to the band are equivalent as taught by Kawasaki. Substitution of one known element for another element providing the same function to yield predictable results would have been obvious to one of ordinary skill in the art at the time of the invention.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton (US 5,413,582) in view of McEwen (US 4,770,175).

Regarding claim 5, Eaton discloses a muscle development device comprising: a hollow tight fitting band (20) having a tube (38) provided therein; and fastening means (74) for use in keeping a length of the tight fitting band in a loop having a desired size (col. 4, ln. 51-53), the muscle development device being used to develop muscles of a limb while restricting the blood flow therethrough by means of applying, with said tight fitting band being wrapped around a predetermined compressed range of said limb and said tight fitting band being fastened with said fastening means to have a desired size, a predetermined pressure to said limb around which said tight fitting band is wrapped, the pressure being produced by introducing air to said tube, said tube having a higher stretching rate on the side facing to the muscles than on the side opposite to said muscles, as determined with said tight fitting band being rest on the muscles, said tube being designed to inflate more in a direction against the muscles than in a direction away from the muscles as said tube is filled with air with said tight fitting band being rest on the muscles (col. 4, ln. 65 – col. 5, ln. 21). Eaton discloses the side of the tube opposite the muscle is stiffer than the side of the tube nearest the muscle, but fails to disclose seam tape, which is stretchable but of which stretching rate is lower than that of the tube, adhered to the tube a side

opposite to the muscles. McEwen discloses an occlusive cuff having an inflatable tube (2) having a stiffening strip (24), attached with an adhesive tape, to help direct inflation inwardly toward the muscle (col. 9, ln. 48-54). It would have been obvious to one of ordinary skill to alternatively stiffen the tube by providing a stiffening member attached with adhesive tape (or "seam tape"), having a stretching rate lower than that of the tube, to the side of the tube opposite to the muscles in order to achieve the same predictable result of causing the tube to inflate more toward the muscles than away from the muscles. Substitution of one known element for another element providing the same function to yield predictable results would have been obvious to one of ordinary skill in the art at the time of the invention.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newton (US 2,332,488) and Kawasaki et al. (US 5,433,724) as applied to claim 1 above, and further in view of Nagelman (US 1,288,130). Newton discloses the claimed invention except for an air limiting means that delimits the portion of said tube into which air is allowed to enter when attached to said tight fitting band at a certain position along the length thereof. Nagelman discloses a clamp (15, 17) that delimits the portion of a tube into which air is allowed to enter when attached to a tight fitting band (Fig. 1). It would have been obvious to one of ordinary skill in the art to provide a clamp or "air limiting means" in the device of Newton in order to prevent air from entering the tube until the desired time.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton (US 5,413,582) and McEwen (US 4,770,175) as applied to claim 5 above, and further in view of Nagelman (US 1,288,130). Eaton discloses the claimed invention except for an air limiting means that delimits the portion of said tube into which air is allowed to enter when attached to said tight fitting band at a certain position along the length thereof. Nagelman discloses a clamp (15, 17) that delimits the portion of a tube into which air is allowed to enter when attached to a

tight fitting band (Fig. 1). It would have been obvious to one of ordinary skill in the art to provide a clamp or "air limiting means" in the device of Eaton in order to prevent air from entering the tube until the desired time.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 5, 8 and 9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER L. HORNBERGER whose telephone number is (571)270-3642. The examiner can normally be reached on Monday through Friday from 8am-5pm, Eastern time.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlh
05/19/2009

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734